

1 **SECTION 142.** 854.21 (1) (b) of the statutes is amended to read:

2 854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a)~~ of property by
3 a governing instrument to a class of persons described as "issue," "lawful issue,"
4 "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin,"
5 "distributees," or the like excludes a birth child and his or her issue otherwise within
6 the class if the birth child has been adopted and would cease to be treated as a child
7 of the birth parent under s. 854.20 (2).

8 **SECTION 143.** 856.05 (5) of the statutes is amended to read:

9 856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~
10 ~~documents incorporated by reference under s. 853.32 (1) or (2)~~ and information
11 needed for proof of a ~~lost~~ missing will under s. 856.17.

12 **SECTION 144.** 856.15 (1) of the statutes is amended to read:

13 856.15 (1) GENERALLY. The court may grant probate of an uncontested will on
14 the execution in open court by one of the subscribing witnesses of a sworn statement
15 that the will was executed as required by the statutes and that the testator was of
16 sound mind, of full age, and not acting under any restraint at the time of the
17 execution thereof. If an uncontested will contains an attestation clause showing
18 compliance with the requirements for execution under s. 853.03 or 853.05 or includes
19 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant
20 probate without any testimony or other evidence.

21 **SECTION 145.** 856.16 of the statutes is repealed and recreated to read:

22 **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in
23 connection with the affidavit, if a will includes an affidavit in substantially the form
24 under s. 853.04 (1) or (2), all of the following apply:

1 (a) The will is conclusively presumed to have been executed in compliance with
2 s. 853.03.

3 (b) Other requirements related to the valid execution of the will are rebuttably
4 presumed.

5 (c) A signature affixed to the affidavit is considered a signature affixed to the
6 will, if necessary to prove the due execution of the will.

7 (2) Admission of a will under s. 856.13 or 856.15 is not dependent on the
8 existence of a valid affidavit under s. 853.04.

9 **SECTION 146.** 856.17 of the statutes is amended to read:

10 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by
11 accident ~~or~~, destroyed without the testator's consent, unavailable but revived under
12 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution
13 and validity of the will and to establish the same. The petition for the probate of the
14 will shall set forth the provisions ~~thereof~~ of the will.

15 **SECTION 147.** 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and
16 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

17 766.31 (3) (b) 3. (intro.) The surviving spouse and a distributee who is a
18 successor in interest to all or part of the decedent's one-half interest in marital
19 property may petition the court to approve an exchange of interests in the marital
20 property authorized under subd. 1. or 2., but court approval of the exchange is not
21 required for the agreement under subd. 1. or 2. to be effective. If the court approves
22 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall
23 exchange their respective interests in 2 or more items of marital property and
24 distribute the items in a manner to conform with the exchange. The exchange shall:

1 a. Occur before the final distribution of the estate assets under the governing
2 instrument;

3 **SECTION 148.** 857.03 (2m) of the statutes is created to read:

4 857.03 (2m) The surviving spouse and the personal representative may
5 petition the court to approve an exchange of interests in marital property as provided
6 in s. 766.31 (3) (b) 3.

7 **SECTION 149.** 859.01 of the statutes is amended to read:

8 **859.01 Time for filing claims.** When an application for administration is
9 filed, the court, or the probate registrar under informal administration proceedings,
10 shall by order set a date as the deadline for filing a claim against the decedent's
11 estate. The date shall be not less than 3 nor more than 4 months from the date of the
12 order. If a claim is not filed by the deadline, the consequences provided in s. 859.02
13 apply.

14 **SECTION 150.** 859.02 (2m) of the statutes is created to read:

15 859.02 (2m) (a) A claim based on a tort is subject to s. 859.45.

16 (b) A claim of a creditor without notice is subject to s. 859.48.

17 **SECTION 151.** 861.01 (3) of the statutes is renumbered 766.31 (7m) and
18 amended to read:

19 766.31 (7m) **PERSONAL INJURY DAMAGES; LOST EARNINGS.** To the extent that
20 marital property includes damages for loss of future income arising from a personal
21 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as
22 individual property that portion of the award that represents an income substitute
23 after the death of the other spouse.

24 **SECTION 152.** 861.01 (3m) of the statutes is created to read:

1 **861.01 (3m)** PERSONAL INJURY DAMAGES; LOST EARNINGS. Section 766.31 (7m)
2 determines the rights of a surviving spouse to that part of a personal injury claim
3 that represents future lost earnings of the surviving spouse.

****NOTE: On the draft you question whether the cross-reference to s. 766.31 (7m)
should be (7g). I think the cross-reference to (7m) is correct, but please make sure it is. *O.K.*

4 **SECTION 153.** 861.01 (4) of the statutes is created to read:

5 **861.01 (4)** ENFORCEMENT OF SURVIVING SPOUSE'S MARITAL PROPERTY RIGHTS IN
6 NONPROBATE ASSETS. Section 766.70 applies to enforcement of a surviving spouse's
7 marital property rights in nonprobate assets.

8 **SECTION 154.** 861.01 (5) of the statutes is created to read:

9 **861.01 (5)** DIVISION OF MARITAL PROPERTY ON AGGREGATE BASIS. Section 766.31
10 (3) (b) determines how marital property may be divided upon the death of a spouse.

11 **SECTION 155.** Subchapter II (title) of chapter 861 [precedes 861.018] of the
12 statutes is amended to read:

13 **CHAPTER 861**

14 SUBCHAPTER II

15 ELECTIVE SHARE IN

16 DEFERRED MARITAL PROPERTY

17 ELECTIVE SHARE AMOUNT

18 **SECTION 156.** 861.02 (title) of the statutes is amended to read:

19 **861.02 (title)** **Deferred marital property elective share amount.**

20 **SECTION 157.** 861.02 (4) of the statutes is amended to read:

21 **861.02 (4)** SATISFACTION. Satisfaction of the augmented deferred marital
22 property elective share amount is governed by ss. 861.06, 861.07, and 861.11.

23 **SECTION 158.** 861.02 (6) of the statutes is amended to read:

1 861.02 **(6)** WAIVER. Waiver of the deferred marital property elective share
2 amount is governed by s. 861.10.

3 **SECTION 159.** 861.02 (7) (b) of the statutes is amended to read:

4 861.02 **(7)** (b) If a decedent who is not domiciled in this state owns real property
5 in this state, the ~~right~~ rights of the surviving spouse ~~to take an elective share~~ in that
6 property is are governed by s. 861.20.

7 **SECTION 160.** 861.02 (8) of the statutes is repealed and recreated to read:

8 861.02 **(8)** EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (2) (c) and (3m)
9 (d) applies to election of deferred marital property if the decedent's surviving spouse
10 unlawfully and intentionally killed the decedent.

11 **SECTION 161.** 861.04 (2) of the statutes is repealed.

12 **SECTION 162.** 861.04 (2m) of the statutes is created to read:

13 861.04 **(2m)** When the surviving spouse is treated as the decedent under sub.
14 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
15 (1) (e) or (2m).

16 **SECTION 163.** 861.05 (1) (c) of the statutes is amended to read:

17 861.05 **(1)** (c) Transfers of deferred marital property to persons other than the
18 surviving spouse who did not make the transfer, with the written joinder or written
19 consent of the surviving that spouse.

20 **SECTION 164.** 861.05 (1) (e) of the statutes is created to read:

21 861.05 **(1)** (e) The deferred marital property component of any deferred
22 employment benefit plan, or of assets in an individual retirement account that are
23 traceable to the rollover of a deferred employment benefit plan, held by the surviving
24 spouse that would have terminated under s. 766.62 (5) had it been marital property.

25 **SECTION 165.** 861.05 (2) (title) of the statutes is amended to read:

1 861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

2 **SECTION 166.** 861.05 (2m) of the statutes is created to read:

3 861.05 (2m) VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The
4 surviving spouse's property included in the augmented deferred marital property
5 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's
6 property included in the augmented deferred marital property estate is valued under
7 sub. (2), subject to the following:

8 (a) The surviving spouse shall be treated as having died after the decedent on
9 the date of the decedent's death notwithstanding the 120-hour survival requirement
10 under s. 854.03 (1).

11 (b) Life insurance on the surviving spouse's life shall have the value of the
12 deferred marital property component of the interpolated terminal reserve and the
13 unused portion of the term premium of the policy as of the date of the decedent's
14 death.

15 **SECTION 167.** 861.06 (title) of the statutes is amended to read:

16 **861.06 (title) Satisfaction of deferred marital property elective share**
17 **amount.**

18 **SECTION 168.** 861.06 (2) (title) of the statutes is amended to read:

19 861.06 (2) (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE
20 SHARE AMOUNT.

21 **SECTION 169.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

22 861.06 (2) (b) (intro.) All marital, individual, deferred marital, or deferred
23 individual property, transferred to the surviving spouse, including any beneficial
24 interest in property transferred in trust:

25 **SECTION 170.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

1 861.06 (2) (b) 4. a. The first \$5,000 of the value of the gifts from the decedent
2 to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

3 **SECTION 171.** 861.06 (6) of the statutes is created to read:

4 861.06 (6) VALUATION. The value of property used to satisfy the deferred marital
5 property elective share includes the value of any property transferred outright to the
6 surviving spouse, the commuted value of any present or future interest in property
7 transferred to the surviving spouse, and the commuted value of property payable to
8 the surviving spouse under any trust, life insurance settlement option, annuity
9 contract, public or private pension, disability compensation, death benefit or
10 retirement plan, or any similar arrangement.

11 **SECTION 172.** 861.07 (2) (intro.) of the statutes is amended to read:

12 861.07 (2) PERSONS LIABLE. (intro.) The following persons are liable to make
13 a prorated contribution toward satisfaction of the surviving spouse's deferred
14 marital property elective share amount:

15 **SECTION 173.** 861.10 (1) of the statutes is amended to read:

16 861.10 (1) RIGHT TO ELECT MAY BE WAIVED. The right to elect a deferred marital
17 property elective share amount may be waived by the surviving spouse in whole or
18 in part. The waiver may take place before or after marriage. The waiver shall must
19 be contained in a marital property agreement that is enforceable under s. 766.58 or
20 in a signed document filed with a court described in s. 861.08 (1) (a) after the
21 decedent's death.

22 **SECTION 174.** 861.10 (2) of the statutes is amended to read:

23 861.10 (2) WAIVER OF "ALL RIGHTS"-," Unless the waiver provides otherwise, a
24 waiver of "all rights"-," or equivalent language, in the property or estate of a present
25 or prospective spouse, or in a complete property settlement entered into because of

1 separation or divorce, is a waiver of all rights in the deferred marital property
2 elective share amount.

3 **SECTION 175.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

4 861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other
5 3rd party who has received satisfactory proof of the decedent's death and who has not
6 received written notice that the surviving spouse or his or her representative intends
7 to file a petition for the deferred marital property elective share amount or that a
8 petition for the election has been filed is not liable for any of the following:

9 **SECTION 176.** 861.11 (2) (b) of the statutes is amended to read:

10 861.11 (2) (b) A payer or other 3rd party is liable for payments made or other
11 actions taken after receipt of written notice of the intent to file a petition for the
12 elective share amount or written notice that a petition for the elective share amount
13 has been filed.

14 **SECTION 177.** 861.11 (5) (b) of the statutes is amended to read:

15 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
16 a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a
17 financial institution is not liable for having transferred an account included in the
18 augmented deferred marital property estate under s. 861.03 to a beneficiary
19 designated in a governing instrument, or for having taken any other action in
20 reliance on the beneficiary's apparent entitlement under the terms of a governing
21 instrument, regardless of whether the financial institution received written notice
22 of an intent to file, or the filing of, a petition for the deferred marital property elective
23 share amount.

24 **SECTION 178.** 861.17 (3) of the statutes is amended to read:

1 861.17 (3) If the spouse is successful in an action to reach fraudulent property
2 arrangements, recovery is limited to the share amount the spouse would receive
3 under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.
4 Recovery A spouse who recovers under this subsection forfeits any power of
5 appointment which that the surviving spouse possesses over the remaining portion
6 of the fraudulently arranged property, except a special power.

7 **SECTION 179.** 861.21 (1) (a) of the statutes is amended to read:

8 861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

9 **SECTION 180.** 861.21 (2) of the statutes is amended to read:

10 861.21 (2) ~~IF MARITAL~~ DECEDENT'S PROPERTY INTEREST IN HOME. Subject to subs.
11 (4) and (5), if a married decedent has a marital property interest in a home, the
12 decedent's entire interest in the home shall be assigned to the surviving spouse if the
13 surviving spouse petitions the court requesting such a distribution and if a governing
14 instrument does not provide a specific transfer of the decedent's interest in the home
15 to someone other than the surviving spouse. The surviving spouse shall file the
16 petition within 6 months after the decedent's death, unless the court extends the
17 time for filing.

18 **SECTION 181.** 861.21 (3) of the statutes is repealed.

19 **SECTION 182.** 861.21 (4) of the statutes is amended to read:

20 861.21 (4) PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in
21 the home under sub. (2) to the surviving spouse upon payment of the value of the
22 decedent's interest in the home that does not pass to the surviving spouse under
23 intestacy or under a governing instrument. Payment shall be made to the
24 fiduciary holding title to the interest. The surviving spouse may use assets due him
25 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court

1 extends the time, the surviving spouse shall have one year from the decedent's death
2 to pay the value of the assigned interest.

3 **SECTION 183.** 861.21 (5) of the statutes is amended to read:

4 861.21 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the
5 surviving spouse or of any interested person that part of the land is not necessary for
6 dwelling purposes and that it would be inappropriate to assign all of the surrounding
7 land as the home under sub. (2), the court may set off for the home as much of the
8 land as is necessary for a dwelling. In determining how much land should be set off,
9 the court shall take into account the use and marketability of the parcels set off as
10 the home and the remaining land.

11 **SECTION 184.** 861.31 (1c) of the statutes is repealed.

12 **SECTION 185.** 861.31 (1m) of the statutes is amended to read:

13 861.31 (1m) The court may, without notice or on such notice as the court
14 directs, order payment by the personal representative or special administrator of an
15 allowance as it the court determines necessary or appropriate for the support of the
16 surviving spouse and any dependent minor children of the decedent during the
17 administration of the estate. ~~In making or denying the order the~~ The court shall
18 consider the size of the probate estate, other resources available for support, the
19 existing standard of living, and any other factors it considers relevant.

20 **SECTION 186.** 861.31 (2) of the statutes is amended to read:

21 861.31 (2) The court may order that an allowance ~~may~~ be made to the spouse
22 for support of the spouse and any ~~dependent~~ minor children of the decedent, or that
23 separate allowances ~~may~~ be made to the spouse and to the ~~dependent~~ minor children
24 of the decedent or their guardian, if any, if the court finds separate allowances

1 advisable. If there is no surviving spouse, the court may order that an allowance may
2 be made to the ~~dependent~~ minor children of the decedent or to their guardian, if any.

3 **SECTION 187.** 861.31 (4) (intro.) of the statutes is amended to read:

4 861.31 **(4)** (intro.) The court may ~~direct~~ order that the allowance be charged
5 against income or principal, either as an advance or otherwise, but ~~in no event may~~
6 the court may not order that an allowance for support of ~~dependent~~ minor children
7 of the decedent be charged against the income or principal interest of the surviving
8 spouse. The court may ~~direct~~ order that the allowance for support of the surviving
9 spouse, not including any allowance for support of ~~dependent~~ minor children of the
10 decedent, be applied in satisfaction of any of the following:

11 **SECTION 188.** 861.31 (4) (a) of the statutes is amended to read:

12 861.31 **(4)** (a) Any entitlement of the surviving spouse under s. ~~853.11~~ (2)
13 853.12.

14 **SECTION 189.** 861.33 (title) of the statutes is amended to read:

15 **861.33** (title) **Selection of personalty by surviving spouse or children.**

16 **SECTION 190.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

17 861.33 **(1)** (a) (intro.) Subject to this section, in addition to all allowances and
18 distributions, the surviving spouse, ~~or if there is no surviving spouse the decedent's~~
19 ~~children,~~ may file with the court a written selection of the following personal
20 property, which shall ~~thereupon~~ then be transferred to the spouse ~~or children~~ by the
21 personal representative:

22 **SECTION 191.** 861.33 (1) (b) of the statutes is amended to read:

23 861.33 **(1)** (b) The selection in par. (a) may not include items specifically
24 bequeathed except that the surviving spouse ~~or children~~ may in every case select the
25 normal household furniture, furnishings, and appliances necessary to maintain the

1 home. For this purpose antiques, family heirlooms, and collections ~~which~~ that are
2 specifically bequeathed are not classifiable as normal household furniture or
3 furnishings.

4 **SECTION 192.** 861.33 (1) (c) of the statutes is repealed.

5 **SECTION 193.** 861.33 (2) of the statutes is amended to read:

6 861.33 (2) If it appears that claims may not be paid in full, the court may, upon
7 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~
8 under this section to items not exceeding \$5,000 in aggregate inventory value until
9 ~~such time as~~ the claims are paid in full or the court otherwise orders; ~~or the court~~
10 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at
11 the option of the spouse ~~or children~~, pay the excess in value over this amount.

12 **SECTION 194.** 861.33 (3) of the statutes is amended to read:

13 861.33 (3) The surviving spouse ~~or children~~ may select items not specifically
14 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000
15 limit or obtain the transfer of items exceeding the limit set by the court under sub.
16 (2), by paying to the personal representative the excess of inventory value over the
17 respective limit.

18 **SECTION 195.** 861.33 (4) of the statutes is amended to read:

19 861.33 (4) ~~Subject to sub. (1) (c), the~~ The personal representative has power,
20 without court order, to execute appropriate documents to effect transfer of title to any
21 personal property ~~selected by the spouse or children~~ selects under this section. A
22 person may not question the validity of the documents of transfer or refuse to
23 accomplish the transfer on the grounds that the personal representative is also the
24 surviving spouse ~~or the only child~~ of the decedent.

25 **SECTION 196.** 861.35 (title) of the statutes is amended to read:

1 **861.35** (title) **Special allowance for support of spouse and support and**
2 **education of dependent minor children.**

3 **SECTION 197.** 861.35 (1c) of the statutes is repealed.

4 **SECTION 198.** 861.35 (1m) (intro.) of the statutes is amended to read:

5 861.35 **(1m)** (intro.) If the decedent is survived by a spouse or by minor
6 children, the court may order an allowance for the support and education of each
7 dependent minor child until he or she reaches a specified age, not to exceed 18, and
8 for the support of the spouse. This allowance may be made whether the estate is
9 testate or intestate. If the decedent is not survived by a spouse, the court also may
10 allot directly to ~~any of the dependent~~ the minor children household furniture,
11 furnishings, and appliances. ~~No~~ The court may not order an allowance may be made
12 under this section if any of the following ~~apply~~ applies:

13 **SECTION 199.** 861.35 (1m) (a) of the statutes is amended to read:

14 861.35 **(1m)** (a) The decedent has amply provided for each minor child and for
15 the spouse by the terms of his or her will and the estate is sufficient to carry out the
16 terms after payment of all debts and expenses transfer of probate or nonprobate
17 assets, or support and education have been provided for by any other means.

18 **SECTION 200.** 861.35 (1m) (b) of the statutes is amended to read:

19 861.35 **(1m)** (b) In the case of dependent minor children, if the surviving spouse
20 is legally responsible for support and education and has ample means to provide
21 them in addition to his or her own support.

22 **SECTION 201.** 861.35 (1m) (c) of the statutes is amended to read:

23 861.35 **(1m)** (c) In the case of the surviving spouse, if he or she has ample means
24 to provide for his or her support.

25 **SECTION 202.** 861.35 (2) of the statutes is amended to read:

1 861.35 (2) The court may set aside property to provide an allowance and may
2 appoint a trustee to administer the property, subject to the continuing jurisdiction
3 of the court. If a child dies or reaches the age of 18, or if at any time the property held
4 by the trustee is no longer required for the support of the spouse or the support and
5 education of ~~any dependent~~ the minor child, any remaining property is to be
6 distributed by the trustee as ~~directed by the court~~ orders in accordance with the
7 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
8 unpaid claims of the decedent's estate.

9 **SECTION 203.** 861.35 (3) (a) of the statutes is amended to read:

10 861.35 (3) (a) The effect on claims under s. 859.25. The court shall balance the
11 needs of the spouse or ~~dependent~~ minor children against the nature of the creditors'
12 claims in setting the amount allowed under this section.

13 **SECTION 204.** 861.35 (4) (intro.) of the statutes is amended to read:

14 861.35 (4) (intro.) The court may ~~direct~~ order that the allowance to the
15 surviving spouse, not including any allowance for the support and education of
16 dependent minor children, be applied in satisfaction of any of the following:

17 **SECTION 205.** 861.35 (4) (a) of the statutes is amended to read:

18 861.35 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2)
19 853.12.

20 **SECTION 206.** 863.08 of the statutes is amended to read:

21 **863.08 Exchange by distributee and surviving spouse.** In its final
22 judgment or other order, the court shall assign items to the surviving spouse and
23 distributee to conform with the exchange under s. 857.03 (2) 766.31 (3) (b) to the
24 extent that the court approved the exchange.

25 **SECTION 207.** 863.15 of the statutes is amended to read:

1 **863.15 Right of retention Debts to estate.** ~~When If~~ a distributee of an estate
2 is indebted to the estate, the ~~amount of the indebtedness if due, or the present worth~~
3 ~~of the indebtedness, if not due, shall be treated as an offset by the personal~~
4 ~~representative against property of the estate to which the distributee is entitled. In~~
5 ~~contesting the offset the distributee shall have the benefit of any defense which~~
6 ~~would be available to the distributee in a direct proceeding by the personal~~
7 ~~representative for the recovery~~ treatment of the debt is governed by s. 854.12.

8 **SECTION 208.** 863.16 of the statutes is repealed and recreated to read:

9 **863.16 Valuation used in distribution of fractional shares.** Valuation of
10 property distributed in satisfaction of a fractional share is determined by s. 854.115.

11 **SECTION 209.** 863.19 of the statutes is repealed and recreated to read:

12 **863.19 Valuation used in distribution of estate assets.** Valuation of
13 property distributed in satisfaction of a pecuniary bequest, or a dollar amount fixed
14 by formula or otherwise, is determined by s. 854.115.

15 **SECTION 210.** 865.07 (1) (d) of the statutes is amended to read:

16 865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether
17 the original will is in the possession of the court or accompanies the application and,
18 contains an attestation clause showing compliance with the requirements of
19 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form
20 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

21 **SECTION 211.** 867.03 (1g) (intro.) of the statutes is amended to read:

22 867.03 (1g) **GENERALLY.** (intro.) When a decedent leaves ~~solely owned~~ property
23 subject to administration in this state which does not exceed \$20,000 \$50,000 in
24 value, any heir of the decedent or person who was guardian of the decedent at the
25 time of the decedent's death may collect any money due the decedent, receive the

1 property of the decedent, and have any evidence of interest, obligation to, or right of
2 the decedent transferred to the affiant if the heir or guardian provides to the person
3 owing the money, having custody of the property, or acting as registrar or transfer
4 agent of the evidences of interest, obligation to, or right, or, if the property is an
5 interest in or lien on real property, provides to the register of deeds preliminary to
6 the recording required under sub. (2m), proof of prior mailed notice under sub. (1m)
7 if applicable and an affidavit in duplicate showing all of the following:

8 **SECTION 212.** 867.03 (1g) (b) of the statutes is amended to read:

9 867.03 (1g) (b) The total value of the decedent's property subject to
10 administration in this state at the date of decedent's death.

11 **SECTION 213.** 867.035 (1) (a) 4. of the statutes is amended to read:

12 867.035 (1) (a) 4. The value of the ~~solely-owned~~ property subject to
13 administration in this state left by the decedent, after payment of burial costs, does
14 not exceed the amount under s. 867.03 (1g) (intro.).

15 **SECTION 214.** 880.61 (11m) of the statutes is created to read:

16 880.61 (11m) "Qualified minor's trust" means any trust, including a trust
17 created by the custodian, *Need a comma, because otherwise the QTM could mean "any trust".* that satisfies the requirements of section 2503 (c) of the
18 Internal Revenue Code and the regulations implementing that section.

19 **SECTION 215.** 880.675 (1m) of the statutes is created to read:

20 880.675 (1m) At any time a custodian may transfer part or all of the custodial
21 property to a qualified minor's trust without a court order. Such a transfer
22 terminates the custodianship to the extent of the transfer.

23 **SECTION 216.** 1997 Wisconsin Act 188, section 233 (1) is amended to read:

24 [1997 Wisconsin Act 188] Section 233 (1) This act first applies to transfers
25 relating to deaths occurring on January 1, 1999, except ~~with respect to irrevocable~~

that this act does not apply to transfers under governing instruments executed that were irrevocable before that date.

SECTION 217. Initial applicability.

(1) The treatment of sections 40.02 (8) (a) 2., 705.06 (1) (c) ~~and (2)~~ 705.27, 852.12, ~~854.08 (6) (a) 1. and 2.,~~ 854.115, 854.12, 861.31 (1m), (2), and (4) (intro.) and (a), 861.33 (1) (a) (intro.) and (b), ~~(2), (3), and (4),~~ 861.35 (1m) (intro.), ~~(1m) (a), (b), and (c), (2), (3) (a), and (4) (intro.) and (a),~~ 863.15, 863.16, and 863.19 of the statutes, the renumbering and amendment of sections 705.04 (2), 852.01 (1) (a) 2., and 854.08 (5) of the statutes, and the creation of sections 705.04 (2) (a) and (d), 852.01 (1) (a) 2. b., and 854.08 (5) (a) and (d) of the statutes first apply to transfers related to deaths occurring on the effective date of this subsection but do not apply to transfers under governing instruments that were irrevocable before that date.

(END)

(Notes)

861.31(1)(c), 861.33(1)(c), and 861.35(1)(c) seem to be part of a package that was repealed. Since the rest of the package is only repealed prospectively, it seems that these provisions should be treated the same way.

Hanaman, Cathlene

From: Howard Erlanger [hserlang@wisc.edu]
Sent: Wednesday, December 29, 2004 11:47 AM
To: Hanaman, Cathlene
Subject: further update re 852.05[1]
Cathlene--

Here is a further revision to 852.05[1] -- it will also make the language more parallel to that of 854.21.

"Child born to unmarried parents. A child born to unmarried parents is treated in the same manner as a child born to married parents with respect to intestate succession from and through his or her mother, and from and through his or her father if any of the following applies:"

I dropped the reference to issue of the child in order to make the construction less awkward. I don't think it changes the meaning, since if the child is treated the same as a marital child, then issue are obviously included. Please let me know if you have comments on that, and I will also run it by Liz when she gets back.

Thanks.
Howie

To: Hanaman, Cathlene
Subject: RE: "This section and each of its subparts..."

Thanks, Cathlene. I was thinking that might be what happened, but was concerned about it falling through the cracks.

I like the change -- which would have to be throughout Chapter 854 -- but would like to run it by a couple people first.

How much time do we have?

Best,
Howie

At 12/28/2004 10:49 AM, you wrote:

Sorry about the delay, I wanted to run your question by some people and holidays have interfered.

The consensus is to repeal and recreate to read: "Any provision in this section is inapplicable to a transfer if the person who executed the instrument that governs the transfer had a contrary intent to that provision. Extrinsic evidence may be used to construe the intent."

How's that for a first attempt?

-----Original Message-----

From: Howard Erlanger [<mailto:hserlang@wisc.edu>]

Sent: Monday, December 27, 2004 11:10 PM

To: Hanaman, Cathlene

Subject: Fwd: "This section and each of its subparts..."

Hi Cathlene-- I am really hoping to hear back from you on this. If the reasoning isn't sound then we need to work on a redraft of the statute.

Thanks.

Howie

Date: Wed, 22 Dec 2004 09:39:09 -0600

To: <cathlene.hanaman@legis.state.wi.us>

From: Howard Erlanger

<hserlang@wisc.edu>

Subject: "This section and each of its subparts..."

Dear Cathlene--

Please review this Committee Note to s. 854.20[5] and let us know whether it correctly captures the LRB view of the meaning of the statute. We are fine with the language in the statute if it will do the job.

Thanks.

Howie

Committee Note

Sub. (5) provides that the rules as stated above are merely default rules. The substance of this provision is unchanged from the former

statute. It is important to note that for this statute as for all others in Chapter 854 where contrary intent applies the person who executed the governing instrument may have had a contrary intent regarding only part of the statute. Thus the provision can be read to state, If the transfer is made under a governing instrument and the person who executed the instrument had a contrary intent regarding this section or any of its subparts, the section or subpart does not apply to the transfer. Extrinsic evidence may be used to construe that intent.

Consider the following examples under s. 854.20(2)(am)

1. A and B are birth parents of a nonmarital child, C. A dies, and B's new partner adopts C. As parent provides for a transfer at death to his or her grandchildren, and sufficient evidence exists to show that As parent meant to include C as a grandchild. Under sub. (5), the general provision of (2)(am) would be negated, and C would take as a grandchild.
2. A and B are birth parents of a marital child, C. A dies, and B's new spouse adopts C at a young age. As parent provides for a transfer at death to his or her grandchildren, and sufficient evidence exists to show that As parent did not intend to include C as a grandchild. Under sub. (5), the exception of (2)(am)2.a. would be negated, the general provision of (2)(am) would apply, and C would not take.

Hanaman, Cathlene

From: Howard Erlanger [hserlang@wisc.edu]
Sent: Wednesday, December 29, 2004 11:25 AM
To: Hanaman, Cathlene
Subject: RE: "This section and each of its subparts..."

Hi Cathlene--

Here is a suggested revision of the ch 854 language:

"If the person who executed the governing instrument had an intent contrary to any provision in this section, then that provision is inapplicable to the transfer. Extrinsic evidence may be used to construe the intent."

Also, a late change for 852.05[1] --

A ~~nonmarital~~ child born to unmarried parents or the child's issue is entitled to take in the same manner as a marital child by intestate succession from and through his or her mother, and from and through his or her father if any of the following applies:

If it would work to get these into P4, that would be great. Please let me know what schedule we are on -- when will you need absolutely final material from us? Will any comments to P4 be our final chance to make changes? We are still focused on doing whatever is necessary to have the bill introduced as early as possible when the legislature starts up again.

Best,
Howie

At 12/28/2004 01:10 PM, you wrote:

Do you want p4 before or with the ch. 854 language?

-----Original Message-----

From: Howard Erlanger [mailto:hserlang@wisc.edu]
Sent: Tuesday, December 28, 2004 11:58 AM
To: Hanaman, Cathlene
Subject: RE: "This section and each of its subparts..."

I'll try my best, and should be able to do it.

When should I expect P4? Also, when it is sent, could it be in an rtf file as well as pdf?

Thanks.

Howie

At 12/28/2004 11:53 AM, you wrote:

How about by next Tuesday since your people may be unavailable?

-----Original Message-----

From: Howard Erlanger [mailto:hserlang@wisc.edu]
Sent: Tuesday, December 28, 2004 11:51 AM

01/11/2005

Hanaman, Cathlene

From: Howard Erlanger [hserlang@wisc.edu]

Sent: Wednesday, January 05, 2005 10:04 AM

To: Hanaman, Cathlene

Subject: "construing" vs 'showing" intent

Cathlene-- We just noted that some stats, such as the proposed change to 702.03(1) say "Extrinsic evidence may be used to **show** contrary intent," while most say that "Extrinsic evidence may be used to **construe** the intent." While the meaning is similar, it seems that the language should be consistent and that "construe" is most consistent with prior usage in the law. [I think the 'show' might have crept in on one of my edits. Sorry about that.]

Separately, please let me know any information you have about scheduling the next turnaround, and what is our last day for input.

Thanks,
Howie

✓ 702.03 (1) Unless the person who executed it had a contrary intention is found, if a governing instrument, as defined in s. 854.01 (2), or an inter vivos governing instrument, as defined in s. 700.27 (1) (c), creating creates a power of appointment that expressly requires that the power be exercised by any type of reference to the power or its source, it is presumed that the donor's intention in requiring the reference was is presumed to be to prevent an inadvertent exercise of the power. Extrinsic evidence may be used to show contrary intent.

✓ 766.61 (7) If Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse predeceases an insured spouse, the decedent spouse's marital property interest of the decedent spouse in a policy which that designates the surviving spouse as the owner and insured is limited to a dollar amount equal to one-half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the decedent spouse's date of death of the decedent spouse. All other rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate at the decedent spouse's death.

✓ 853.12 (2) VALUE OF SHARE. intro. The value of the share under par. (a) sub. (1) is the value of the share that the surviving spouse would have received had the testator died with an intestate estate equal to the value of the testator's net estate of the testator but the value of the net estate of the testator shall first be reduced by the value of all of the following:

(b) All devises to or for the benefit of the issue of a child described in subd. 1. par. (a). All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the benefit of children described in subd. 1. par. (a) or issue of those children

853.18 (1) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch. 766, none of the following no written designation in accordance with the terms of any insurance, annuity or endowment contract, or in any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and no written designation made under a contract, plan, system or trust providing for pension, retirement, deferred compensation, stock bonus, profit sharing or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing, is subject to or defeated or impaired by any statute or rule of law governing the transfer of property by will, gift or intestacy, even though that the designation or assignment is revocable or the rights of that the beneficiary, payee, owner or assignee are otherwise subject to defeasance.

(a) A written designation in accordance with the terms of any insurance, annuity or endowment contract

(b) Any agreement issued or entered into by an insurance company supplemental to or in settlement of any insurance, annuity, or endowment contract.

(c) Any written designation made under a contract, plan, system or trust providing for pension, retirement, deferred compensation, stock bonus, profit-sharing or death benefits

(d) An employment or commission contract, of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing. [Cathlene, breaking up the statute this way shows off the fact that [d] doesn't seem to make sense. I will try to find out what it is supposed to mean.]

✓ 854.01 (1) "Extrinsic evidence" means evidence that would be inadmissible under the common law parole evidence rule or a similar doctrine because the evidence is not contained in the governing instrument to which it relates. [drop 'e' on parol]

[1] 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

✓ [2] 854.13 (2) (a) 1. of the statutes is created to read:

854.13 (2) (a) 1. In this paragraph, "person" includes a person who is unborn or ~~unascertained.~~ **whose identity is unknown.**

December 22, 2004

Further changes for 854.13 - Disclaimer

Please make parallel changes to 700.27

The "original" text is the current statute. Strike through and underlines are changes that have been made as part of 05-0135/P3. **Strike through and underlined *italics* are further changes**

(10) ~~DEVOLUTION OF DISCLAIMED FUTURE INTEREST~~ *ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING INTEREST IS DISCLAIMED* . (a) *Subsequent interest not held by disclaimant.* Unless the governing instrument creating the future interest manifests a contrary intent provides otherwise, either expressly or as construed from extrinsic evidence, upon the disclaimer of a preceding interest, a *future subsequent* interest *not held by the disclaimant and* limited to take effect in possession or enjoyment after the termination of the interest which *that* is disclaimed takes *accelerates to take* effect as if the disclaimant had died *immediately* before the ~~effective date of the governing instrument~~ *time when the disclaimed interest would have taken effect in possession or enjoyment* or, if the disclaimant is an appointee under a power exercised by a ~~governing instrument~~ *power of appointment*, as if the disclaimant had died before the effective date of the exercise of the power.

(b) Subsequent interest held by the disclaimant. Unless the governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest held by the disclaimant does not accelerate.

December 23, 2004

Further changes for 854.13(7)

Addition to Section 113 page 36

Please note that I changed the title and added sub-titles in 854.13(7). Sections (b) and (c) are additions to LRB-0135P3. x

(b) *Devolution to descendants of the disclaimants.* Unless the governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, if, by law or under the governing instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time the disclaimed interest would have taken effect in possession or enjoyment, the disclaimed interest passes only to the descendants of the disclaimant who survive when the disclaimed interest takes effect in possession or enjoyment.

(c) *Applicable to present and future interests.* This section applies to the disclaimer of present interests and future interests.

January 11, 2005

Consolidated list of changes to P3 that have been added since the marked up copy of December, with additional changes as indicated.

702.03 (1) Unless the person who executed it had a contrary intention is found, if a governing instrument, as defined in s. 854.01 (2), or an inter vivos governing instrument, as defined in s. 700.27 (1) (c), ~~creating~~ **creates** a power of appointment **that** expressly requires that the power be exercised by any type of reference to the power or its source, ~~it is presumed that the donor's intention in requiring the reference was is~~ **presumed to be** to prevent an inadvertent exercise of the power. Extrinsic evidence may be used to ~~show~~ **construe** contrary intent.

Email of 1/5/05 added the change from 'show' to 'construe.' Please check that all the stats that refer to use of extrinsic evidence use 'construe.' Thanks.

766.61 (7) If Except as provided in s. 854.14 (3m) (b) 2., if a noninsured spouse predeceases an insured spouse, the **decedent spouse's** marital property interest ~~of the decedent spouse~~ in a policy ~~which that~~ designates the surviving spouse as the owner and insured is limited to a dollar amount equal to one-half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the **decedent spouse's** date of death ~~of the decedent spouse~~. All other rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate at the decedent spouse's death.

No further changes to this provision.

852.05 Status of ~~nonmarital~~ child born to unmarried parents for purposes of intestate succession.
(1) A ~~nonmarital~~ child born to unmarried parents or the child's issue is entitled to take in the same manner as a marital child by intestate succession from and through his or her mother, and from and through his or her father if any of the following applies:

The previous request may have struck out "or the child's issue," but we now think that the phrase needs to remain.

853.12 (2) VALUE OF SHARE. **(intro.)** The value of the share under ~~par. (a)~~ **sub. (1)** is the value of the share that the surviving spouse would have received had the testator died with an intestate

estate equal to the value of the testator's net estate ~~of the testator~~ but the value of the net estate ~~of the testator~~ shall first be reduced by the value of all of the following:

(b) All devises to or for the benefit of the issue of a child described in subd. 1. par. (a).

All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the benefit of children described in subd. 1. par. (a) or issue of those children

No further changes to this provision.

853.18 (1) Except as otherwise provided in s. 853.15 or 853.17 (1) or ch. 766, none of the following no written designation in accordance with the terms of any insurance, annuity or endowment contract, or in any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and no written designation made under a contract, plan, system or trust providing for pension, retirement, deferred compensation, stock bonus, profit-sharing or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing, is subject to or defeated or impaired by any statute or rule of law governing the transfer of property by will, gift or intestacy, even though ~~that the~~ designation or assignment is revocable or the rights of ~~that the~~ beneficiary, payee, owner or assignee are otherwise subject to defeasance.

(a) A written designation in accordance with the terms of any insurance, annuity or endowment contract

(b) Any agreement issued or entered into by an insurance company supplemental to or in settlement of any insurance, annuity, or endowment contract.

(c) Any written designation made under a contract, plan, system or trust providing for pension, retirement, deferred compensation, stock bonus, profit-sharing or death benefits, or an employment or commission contract, of any person to be a beneficiary, payee or owner of any right, title or interest thereunder upon the death of another, or any assignment of rights under any of the foregoing.

Our previous requests had [c] broken up into two parts. Note that the language of the new statute is intended to be identical to the language in the current statute; it is only rearranged and broken up for clarity.

Throughout Chp. 854 – and elsewhere in Chps 700, 701, 705, and 851-880 – where current language refers to “contrary intent to this section,” it will change to refer to “intent contrary to any provision in this section”:

The latest language we spoke about was:

“If the person who executed the governing instrument had an intent contrary to any provision in this section, then that provision is inapplicable to the transfer. Extrinsic evidence may be used to construe the intent.”

854.01 (1) “Extrinsic evidence” means evidence that would be inadmissible under the common law parole evidence rule or a similar doctrine because the evidence is not contained in the governing instrument to which it relates. [drop ‘e’ on parol]

No further changes to this provision.

[1] 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

[2] 854.13 (2) (a) 1. of the statutes is created to read:

854.13 (2) (a) 1. In this paragraph, “person” includes a person who is unborn or **whose identity is unascertained.**

This is a change from our previous request.
